

TRANSMITTAL OF APPEAL BRIEF	Docket No. 65678-0004
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In re Application of: Andrew F. Suhy, et al.

Application No. 09/504,000-Conf. #7392	Filing Date February 14, 2000	Examiner G. Akers	Group Art Unit 3624
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Invention: SYSTEM AND METHOD FOR MODELING A SIMULATED FLEET OF ASSETS

TO THE COMMISSIONER OF PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed: September 9, 2003 .

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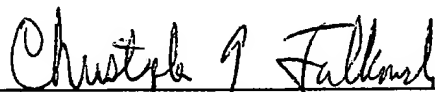
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Dated: September 9, 2003

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Appeal Brief Transmittal

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(Leslie M. Wang)

Attorney Docket: 65678-0004 (DCCIE 5297)
Application Number: 09/504,000

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of: PARENT, et al.

Group Art Unit : 3624

Serial No.: 09/504,000

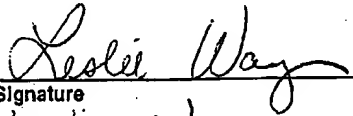
Examiner: Akers, Geoffrey R.

Filed: 02/14/2000

For: SYSTEM AND METHOD FOR MODELING A SIMULATED
FLEET OF ASSETS

Attorney Docket No.: 65678-0004 (DCCIE 5297)

MS Appeal Brief - Patents
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BRIEF ON APPEAL

Honorable Sir:

This Appeal is taken from the Examiner's Final Rejection dated June 17, 2003 (hereinafter the "Final Office Action") of claims 1-22¹ in the above-identified application. The Notice of Appeal was timely filed on July 9, 2003. Submitted herewith are two additional copies of this

¹ Page 2 of the Final Office Action acknowledges that the Applicants added claim 22 in an Amendment filed on May 12, 2003. The Office Action also affirmatively provides that "Claims 1-22 are pending." However, a Final Rejection was issued by the Examiner even though claim 22 was not addressed in any way by the Final Office Action, and the Office Action expressly provides that "Claims 1-21" are rejected. For the purposes of this appeal, the Applicants consider claim 22 to be rejected on the same grounds as claim 1, a claim that bears some similarity to claim 22.

Appeal Brief. Applicants (hereafter "Appellants") respectfully request consideration of this appeal by the Board of Patent Appeals and Interferences for allowance of the present patent application referenced above.

An oral hearing is not desired.

I. REAL PARTY IN INTEREST

The Real "Party-In-Interest" is Dana Corporation, located at 4500 Dorr Street, P.O. Box 10000, Toledo, Ohio 43697. Dana Corporation was assigned all rights to the U.S. Patent Application identified by Serial No. 09/504,000 on May 15, 20003 by Dana Commercial Credit Corporation of 660 Beaver Creek Circle, Maumee, Ohio 43537.

II. RELATED APPEALS AND INTERFERENCES

On July 9, 2003, Appellants also filed a notice to appeal the final rejection of U.S. Application Serial No. 09/441,289 filed November 16, 1999. The application at issue in this appeal is a C-I-P application claiming priority from application 09/441,289.

III. STATUS OF CLAIMS

Claims 1-22 are pending in the application and claims 1-22 are the subject of this Appeal. The present application was filed on February 14, 2000 with originally-filed claims 1-21. In response to the Office Action dated December 10, 2002, claim 22 was added. In response to the Final Rejection dated June 17, 2003, Appellants submitted a Notice of Appeal dated July 9, 2003. No claims have been allowed.

Claims 1-4 and 14-15 stand rejected under 35 U.S.C. 103(a) as unpatentable over (i) U.S. Patent No. 5,922,040 to Prabhakaran ("Prabhakaran") in view of (ii) a paper by Becker et al. titled "Analysis and Modeling of a Fleet Management System of an Airport Shuttle Service" ("Becker") in view of (iii) U.S. Patent No. 6,453,298 to Murakami ("Murakami") in view of (iv) U.S. Patent No. 6,411,922 to Clark ("Clark") and further in view of (v) an article by Julian A. Swedish titled "Simulation of an Inland Waterway Barge Fleet Distribution Network" ("Swedish").

Claims 5-9, 13, and 16-20 stand rejected under 35 U.S.C. 103(a) as unpatentable over (i) Prabhakaran in view of (ii) Becker in view of (iii) Linde, AG/Fleet Management (hereinafter "Linde") in view of (iv) Murakami in view of (v) Clark and further in view of (vi) Swedish.

Claims 10-12 and 21 stand rejected under 35 U.S.C. 103(a) as unpatentable over (i) Prabhakaran in view of (ii) Becker in view of (iii) Linde in view of (iv) GE-Fleet ("GE") in view of (v) Murakami in view of (vi) Clark and further in view of (vii) Swedish.

Claim 22 was not specifically addressed in the Final Office Action. For the purposes of this Appeal, it is assumed that claim 22 was rejected on the same basis as claim 1.

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the final rejection. A copy of all claims on appeal is attached hereto as an Appendix.

V. SUMMARY OF THE INVENTION

By way of background, the field of industrial equipment, such as forklifts, includes business entities at several different levels, including manufacturers, dealers, third-party financiers, and end-user customers. In one common arrangement, the dealer maintains an inventory of a wide variety of equipment types for rental to its end-user customers (i.e., the dealer's "rental fleet"). Some types of equipment in the dealer's rental fleet, however, are only infrequently needed by the dealer's end-user customers. Accordingly, such seldomly used items experience a reduced utilization rate compared to other items in the rental fleet. The dealer tolerates reduced utilization of the seldomly used items for a number of reasons, including maintaining customer satisfaction, and, hopefully, not giving the customer a reason to "shop around" for a new dealer who may have larger inventory of seldomly used pieces of equipment. Conventional methods of conducting business, particularly providing rental fleets, have obvious shortcomings, inasmuch as the full economic value of some items in the dealer's rental fleet cannot be realized.

Another common business arrangement involves a third-party financing company that buys pieces of industrial equipment from the manufacturer and then leases the equipment to the end-user customer. The customer then utilizes the industrial equipment (the customer's "fleet") in its business. In some circumstance, the customer actively "manages" the fleet of industrial equipment, attending to repair and maintenance, the acquisition of replacement equipment, and the retirement of old or unproductive equipment from the fleet. In other circumstances, however, the leasing company performs the asset management function. In either set of circumstances, challenges to be overcome by fleet managers include how to effectively and efficiently determine the timing,

selection, and acquisition of replacement equipment, and the disposal of equipment being retired from the fleet or coming to an end of the lease term.

Known approaches to deal with the foregoing challenges fall mostly into the use of manual methods. For example, determining whether to replace a poorly performing piece of equipment has typically been based on limited data relating to the equipment known by an experienced fleet manager.

One known approach for asset management pertains to passenger vehicle fleets and involves a computer-based, Internet-enabled vehicle selector program. The vehicle selector program provides average values for a plurality of different operating parameters and vehicle types that may be of interest to a fleet manager considering vehicle replacement. These parameters may include average monthly maintenance cost, and average miles per gallon. **While the vehicle selector program provides at least some useful financial and performance information to the fleet manager, such a system fails to address the ultimate question fleet managers encounter: How does a change (i.e., an addition, or a subtraction) in the configuration of *my fleet* effect its overall performance? The known vehicle selector program simply does not provide information as to how a combined fleet would perform.**

In one aspect of the present invention, an electronic system for modeling a simulated fleet is provided. The capability to model a simulated or "fantasy" fleet of assets provides the user with an effective and efficient mechanism to perform "what if" analyses. The user can then use the results to evaluate what effect proposed changes to an existing fleet would have on overall fleet performance. The electronic system for modeling a simulated fleet includes a simulated fleet configuration unit, a reporting and analysis module, and a communications interface.

The simulated fleet configuration unit is provided for allowing a user to add a plurality of assets to the simulated fleet. Each asset is defined as having at least one parameter associated therewith. For example, in one embodiment, the parameter may be a total hourly cost to operate the asset. The reporting and analysis module is configured to generate a report having a composite output value that corresponds to the parameter, and, is characteristic of all of the assets in the simulated fleet. For example, the composite output value may be a composite total hourly cost for all the assets in the simulated fleet. Finally, the communications interface is configured to facilitate electronic remote access of the system by the user. For example, in a preferred embodiment, the communications interface allows access to the system over the Internet. This reduces the time and

effort to obtain information. The system, according to this aspect of the present invention, provides a more effective asset management tool than available using conventional systems.

In a preferred embodiment, some of the assets contained in the simulated fleet correspond to assets already contained in the user's existing fleet. The remainder of the assets in the simulated fleet correspond to new or used assets proposed for acquisition by the user. The report generated by the reporting and analysis module contains a composite output value representative of all the assets in a simulated fleet, namely, both the existing assets, and the proposed assets to be acquired. The report may be compared to a second report generated based on the performance of the assets in the existing fleet alone. Comparison of the two reports by the user allows accurate evaluation of the impact of the proposed changes.

VI. ISSUES PRESENTED

A. Whether claims 1-4, 14-15, and 22 are unpatentable under 35 U.S.C. §103(a) over (i) Prabhakaran in view of (ii) Becker, (iii) Murakami, (iv) Clark, and (v) Swedish.

B. Whether claims 5-9, 13, and 16-20 are unpatentable under 35 U.S.C. §103(a) over (i) Prabhakaran in view of (ii) Becker, (iii) Linde, (iv) Murakami, (v) Clark, and (vi) Swedish.

C. Whether claims 10-12 and 21 are unpatentable under 35 U.S.C. §103(a) over (i) Prabhakaran in view of (ii) Becker, (iii) Linde, (iv) GE-Fleet, (v) Murakami, (vi) Clark, and (vii) Swedish.

VII. GROUPING OF CLAIMS

The claims do not stand or fall together. For purposes of this appeal, claims 1-4, 14-15, and 22 stand or fall together as Claim Group A; claims 5-9, 13, and 16-20 stand or fall together as Claim Group B; and claims 10-12 and 21 stand or fall together as Claim Group C. Reasons for separate patentability of the above-indicated Claim Groups A-C are presented in the Arguments section pursuant to 37 C.F.R. § 1.192(c)(5).

VIII. ARGUMENTS

A *prima facie* case of obviousness requires, among other things, that the applied references teach or suggest all of the claim limitations. See MPEP §2143; *In re Vaeck* 947 F.2d 488, 493, 20 USPQ2d 1438, 1444 (Fed. Cir. 1991); *In re Royka*, 490 F.2d 981, 180 USPQ 560, 562 (CCPA 1972). Appellants respectfully traverse the 103(a) rejections because the references cited in the

Final Office Action merely “generally address” some of the elements included in Appellants’ claims. Consequently, the references do not teach every element of the claims, and the rejections do not satisfy the standard set forth by the Federal Circuit in *In re Thrift*, Case Number 01-1445 (Fed. Cir. August 9, 2002), which prohibits the rejections of claims based on a “very general and broad conclusion” when “cited references do not support each limitation” in a claim.

A *prima facie* case of obviousness also requires that there be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. See MPEP §2143; *In re Linter*, 458 F.2d 1013, 173 USPQ 560, 562 (CCPA 1972). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Moreover, the fact that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). Appellants respectfully traverse the 103(a) rejections because there is no suggestion, motivation, or objective reason to combine the cited references. Further, the cited references teach away from the combination of references relied on by the Examiner to reject the claims.

A. CLAIM GROUP A WAS INCORRECTLY REJECTED BECAUSE THE FINAL OFFICE ACTION FAILS TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS

In the Final Office Action, claims 1-4 and 14-15 (Claim Group A) were rejected as unpatentable under 35 U.S.C. §103(a) over Prabhakaran in view of Becker, Murakami, Clark, and Swedish. Appellants respectfully submit that the claims of Claim Group A would not have been obvious to one of ordinary skill in the art because the cited references do not teach all of the claim limitations of Claim Group A. Moreover, the combination of the cited references would not have been obvious to one of ordinary skill in the art at the time of invention because the cited references teach away from each other and Claim Group A. The references cited against Claim Group A cannot be said to include a suggestion or motivation for combination as asserted by the Examiner. Thus, the Examiner has failed to establish a *prima facie* case of obviousness against Claim Group A.

There are numerous claim elements included in Appellants' claims that are not found in any of the numerous references cited by the Examiner. Those elements include: (i) the ability to "allow a user to add one or more assets to a simulated fleet;" (ii) the functionality of generating a "report having a composite output;" (iii) generating a "composite output that corresponds to said parameter" attributed to the asset; (iv) a "composite output" that is "characteristic of all said assets in said simulated fleet;" (v) a "fleet builder module including a step-by-step asset entry system;" (vi) a "fleet search module include a first add-to-fleet feature;" (vii) a "market search module including a second add-to-fleet feature;" (viii) "a simulated fleet module including an add-asset feature;" (ix) the functionality of "allowing a user to "add assets from said existing fleet to said simulated fleet;" (x) a "simulated fleet configuration unit" that is "configured to execute on an application server;" (xi) a "reporting and analyzing module" that is "configured to execute on an application server;" (xii) a "communications interface" that includes a "HTTP compliant web server;" and (xiii) a simulated fleet that includes both "pre-existing fleet assets" and "simulated assets" with each type of asset "having a parameter associated therewith." The failure of the cited art to disclose even one element in Appellants' claims precludes the Examiner's rejection of Appellants' claims. The failure of the cited references to disclose all of the Appellants' claim elements are discussed below.

2. The cited references do not disclose all of the elements of claim 1

Appellants' claim 1 recites the following:

1. An electronic system for modeling a simulated fleet comprising:
a simulated fleet configuration unit configured to allow a user to add one or more assets to said simulated fleet, each asset having a parameter associated therewith;
a reporting and analysis module configured to generate a report having a composite output that corresponds to said parameter and is characteristic of all of said assets in said simulated fleet; and
a communications interface configured to facilitate electronic remote access of said system by the user.

(Claim 1, emphasis added). The Final Office Action fails to cite to disclosures in the prior art of all of the limitations of claim 1, including a "simulated fleet."

- a. The cited references do not disclose **“a simulated fleet configuration unit configured to allow a user to add one or more assets to said simulated fleet”**

The Final Office Action expressly concedes that Prabhakaran does not disclose any “simulation of fleet management assets” (Final Office Action, page 19). Thus, contrary to the Examiner’s citation at the top of page 19, Prabhakaran cannot be said to disclose “a simulated fleet configuration unit configured to allow a user to add one or more assets to said simulated fleet” as included in claim 1.

Becker also fails to disclose a “simulated fleet” because Becker does not provide for the “simulation” of assets. More specifically, Becker does not provide its users to “try out” hypothetical changes to the configuration of assets in the fleet in order to experiment with various fleet configurations as provided in Appellants claims and as identified in the Appellants’ patent application

[S]uch systems fail to address the ultimate question fleet managers encounter: **How does a change (i.e. an addition or a subtraction) in the configuration of my fleet effect its overall performance?** The known vehicle selector program simply does not provide information as to how a combined fleet would perform (emphasis added) (Page 3, Lines 29-34).

Becker shares some of the same prior art weaknesses that the Appellants claims were to overcome. Becker’s teaching relates exclusively to improving the utilization of physically existing assets with respect to “traffic planning” (Becker, Page 1). Becker cannot be used to add a hypothetical new asset to simulated fleet of assets to determine whether or not the new asset should be added to a physically existing fleet. Becker makes no mention of adding or subtracting resources of any type. Instead, Becker’s teaching focuses exclusively on monitoring “available resources” in order to dispatch the “available resources,” such as commercial trucks, more efficiently (Becker, Page 1, Paragraph 2; Page 4, Paragraph 3). Thus, Becker’s system is not a “simulated fleet” as claimed, but rather a simulation of the movements of a physically existing assortment of resources. Becker cannot be said to disclose the functionality to “allow a user to add one or more assets to said simulated fleet” when Becker fails to disclose a “simulated fleet.” The “simulation” asserted to exist on Pages 9-11 of Becker involve “solely one single vehicle . . . whose processes represent the processes of each vehicle of the entire fleet” (emphasis added). Thus, the very language in Becker makes clear that Becker does not simulate a fleet of distinct assets.

Moreover, the Examiner's citations to Becker (Final Office Action, page 19; Becker, section 4.2, page 7, and pages 9-11) fail to disclose any type of "configuration unit." Becker does not disclose a "configuration unit" because Becker does not disclose a fleet of multiple distinct assets. No apparatus is disclosed in Becker that would be suitable for the task of configuring a simulated fleet of assets. Becker is a scheduling system for assets that physically exist. Becker does not teach "simulated fleet management" for "assets . . . having a parameter associated therewith."

The Examiner similarly confuses the nature of the functionality taught by Murakami. Murakami and Becker both focus on the question of scheduling asset capacities in contrast to the management of virtual fleet configurations of Appellants' claim. The Abstract of Murakami provides the following description:

A vehicle allocation system oversees the operation of a plurality of auto-piloted vehicles, used to transport passengers between major ports such as airports, train stations, shopping malls, etc. The vehicle allocation system establishes a search time interval and predicts passenger demands and the status of the monitored vehicles within the search time interval. A predetermined number of vehicles are assigned to each of the ports in an area.

The title of Murakami, "[m]ethod of operating a vehicle redistribution system based upon predicted ride demands," confirms that Murakami's teachings are limited to schedule-related characteristics of a physical fleet that actually exists (Abstract; Col. 1, Lines 23-28). Thus, Murakami cannot be said to teach a simulated fleet as required to reject Appellants' claims. Moreover, because Murakami teaches the optimization of deployments of an actual fleet of vehicles, Murakami is not able to "add one or more assets to said simulated fleet". Murakami teaches the "reallocation" or "redistribution" of existing assets (Col. 1, Lines 23-28), not the adding or subtracting of assets from a fleet of assets. The existing assets of Murakami cannot be a simulated fleet in the context of the patent claims because such a simulation would undermine the very teachings of the Appellants' claims. As the Examiner recognized, the purpose of Murakami teaches "fleet assets distribution to minimize wasted assets." (See e.g., Final Office Action, Page 20). Thus, Murakami constrains its system to the actual operations of existing resources and the inputs, which teaches away from a "simulated fleet."

Clark is relied on by the Examiner for the so-called teaching of costs associated with resources. Thus, it does not make up for the lack of teachings in the other references. Clark is directed simply to the concept of problem modeling in resource optimization that does not require

the use of manual hard-code functions. Clark teaches a problem modeler for determining an optimal allocation of existing resources (Col. 1, Lines 10-25; Col. 3, Lines 40-45). Thus, Clark does not disclose a "simulated fleet" or the capability "to add one or more assets to said simulated fleet" as provided in claim 1.

A method for robotically modeling a user application optimization problem comprises examining a user information resource for database objects and object relationships relevant to solving the optimization problem, transforming the database objects and object relationships into optimization metrics readable by a solver program, and storing the optimization metrics in a solver database accessible by the solver program (Clark Abstract).

A review of the Abstract for Clark reveals that Clark has very little to say on the subject matter of Appellants' claims. The Appellants' claims focus on a different set of problems using a different set of tools.

Although the Examiner asserts that Swedish "teaches simulation of fleet assets" (Final Office Action, page 19), the system taught in Swedish is limited to managing the operations of physically existing resources for the purpose of determining how to allocate resources over an extended period of time (Page 1221, Paragraph 3). Swedish teaches a modeling tool for the logistical management of a waterway distribution system that utilizes barges and tugboats to transport goods (Page 1219, Paragraphs 1 and 5). The Swedish distribution system comprises a fleet of about 100 barges and 12 tugboats, which barges are taught to be represented in the model by a "single dimensional array with 100 cells corresponding to barge ID" (Page 1220, Paragraph 7). Thus, Swedish's simulation model represents only the existing barges and does not teach a "simulated fleet" or the functionality of adding "one or more assets to said simulated fleet" of Appellants' claim 1.

In short, the art relied on by the Examiner emphasizes the novelty and non-obviousness of the present invention, which by not being limited to actual fleet units, permits the configuration of a simulated fleet for determining not only the an optimum use of resources for a pre-existing fleet, but also the total number of resources in the form of simulated assets that should be added to achieve the optimal makeup based on the recited parameter. As stated above, and in the Appellants' Background of Invention Section, the key unanswered question is "[h]ow does a change (i.e. an addition or a subtraction) in the configuration of my fleet effect its overall performance?" None of the cited references answer this question. No combination of the cited

references can answer this question.

The summary of the invention in the Specification further explains the novelty of a simulated fleet: "In a preferred embodiment, some of the assets contained in the simulated fleet correspond to assets already contained in the user's existing fleet. The remainder of the assets in the simulated fleet corresponds to new or used assets proposed for acquisition by the user." (Page 7, lines 3-7, emphasis added). Thus, the numerous prior art references cited by the Examiner do not teach or suggest all of the elements of claim 1, and Claim Group A is in condition for allowance.

- b. The cited references do not disclose "a reporting and analysis module configured to generate a report having a composite output that corresponds to said parameter and is characteristic of all said assets in said simulated fleet"**

As discussed above, the cited references fail to disclose a "simulated fleet," and therefore cannot disclose "a reporting and analysis module configured to generate a report having a composite output that corresponds to said parameter and is characteristic of all said assets in said simulated fleet" as provided for in Appellants' claim 1. Moreover, the Examiner's citations to Prabhakaran (Abstract; Col. 2, Line 25 – Col. 3, Line 10) fail to disclose a "composite output" as claimed by the Appellants. A reading of the Prabhakaran Abstract makes clear that Prabhakaran is exclusively concerned with the individual scheduling characteristics of various vehicles, and not the aggregate or composite of the vehicle itself. As summarized in the Abstract, "[t]he vehicle allocation system establishes a search time interval and predicts passenger demands and the status of the monitored vehicles within the search time interval." Thus, there is no indication in the cited portions of Prabhakaran that the output "corresponds" to a parameter that is a "characteristic of all said assets."

Similar to the situation in *In re Thrift*, Prabhakaran has been applied by the Examiner in an overly "general" manner to reject the Appellants' claims without looking to the specific limitations and elements in the claim. Thus, no *prima facie* case of obviousness has been established with respect to the elements of claim 1, and Claim Group A is in condition for allowance. The Appellants need only show that one material element in claim 1 is not disclosed in the cited art. However, there are numerous examples of claim elements that are not disclosed in the prior art cited by the Examiner.

3. The cited references do not disclose all of the elements of claim 2

While claim 2 is in condition for allowance because it depends from claim 1, it is also separately patentable because the cited references do not disclose all of the limitations of claim 2. There are several claim elements in claim 2 that are not disclosed in the references cited by the Examiner. Only one novel element is required for patentability.

a. The cited references do not disclose “a fleet builder module including a step-by-step asset entry system”

The Examiner cannot point to any portion of text in any of the cited references that disclose the “step-by-step” entry of data. Prabhakaran discloses a batch process, and none of the other cited references provides any details whatsoever relating to the entry of asset information.

The Examiner incorrectly asserts that element 1501 in Figures 6 and 7 of Prabhakaran discloses the above-listed claim elements. The specification of Prabhakaran provides that element 1501 is a “main process manager” (Col. 13, Line 12) that can be used to create a “vehicles file” (Col. 14, Line 13). However, in contrast to a “step-by-step asset entry system,” Prabhakaran uses a single “vehicles file” for all vehicles. Such a configuration requires that a user update the file for vehicles in order to enter or modify data for a single vehicle (Col. 14, Lines 13-24). Thus, no “step-by-step” functionality is disclosed in Prabhakaran. Murakami also teaches away from the Appellants’ claim 2. There is no step-by-step asset entry system because all of the assets already exist. The surplus/shortage control unit 104 and the vehicle redistribution determining unit 105 relied on by the Examiner are limited to the existing assets. “On the basis of the surplus or shortages of vehicles 4 at each port P, a vehicle redistribution determining unit 105 outputs instructions for moving excess vehicles 4 from one port to another, i.e., for redistributing vehicles 4” (Col. 6, Lines 51-54, emphasis added). Clark is limited once again to the issue of teaching cost. As discussed above, Swedish is limited to managing the schedules of existing fleet assets and consequently does not disclose a “step-by-step” functionality for adding an asset to a virtual fleet. The cited references in the aggregate fail to disclose “a fleet builder module including a step-by-step asset entry system” as provided for in Appellants’ claim 2. Thus, the indicated elements are not found in the prior art.

- b. The cited references do not disclose “a fleet search module including a first add-to-fleet feature” or “a market search module including a second add-to-fleet feature”

Contrary to the assertion of the Examiner, element 1501 in Figures 6 and 7 of Prabhakaran I neither a search module nor a market search module that includes the ability to use search results to add to the fleet. As discussed above, the “main process manager” adds vehicles by updating the entire “vehicles file.” Prabhakaran is silent as to the use of a search module that can export search results into its “vehicles file.” Moreover, as discussed above, Becker, Murakami, Clark, and Swedish are limited to existing fleets, so there is no first or second “add-to-fleet” feature.

- c. The cited references do not disclose “a simulated fleet module including an add-asset feature”

As disclosed above in regards to claim 1, the Final Office Action admits that Prabhakaran fails to even disclose a “simulated fleet,” and, Becker, Murakami, Clark, Swedish all fail to teach a “simulated fleet” with “an add-asset feature.” The Examiner cannot point to any portion of text in Becker, Murakami, Clark, or Swedish that discusses how information is added to the perspective systems. Thus, those references cannot be said to disclose the specific element of “an add-asset feature.”

Thus, there are several omissions in the cited art with respect to material elements in Appellants’ claims that preclude the Examiner’s rejection of Appellants’ claims. Only one such shortcoming in the cited references is required for the allowance of Appellants’ claims.

3. The cited references do not disclose all of the elements of Claim 3, including the functionality of allowing a user “to add assets from said existing fleet to said simulated fleet”

Claim 3 further emphasizes the patentability of Claim Group A because none of the cited references discloses the functionality of storing both simulated fleet data and existing fleet data, much less the storage of such data in the same database. As discussed above in relation to claim 1, the cited references do not even disclose a simulated fleet because they are limited to simulation of existing resources. In contrast, the Appellants’ claimed system offers the capability of allowing a user “to add assets from said existing fleet to said simulated fleet” as provided for in Appellants’ claim 3. No reference provided by the Examiner discloses the ability to transfer assets between a simulated fleet and an existing fleet. Therefore, there are elements of claim 3 that are not disclosed

in the prior art cited by the Examiner.

4. The cited references do not disclose all the elements of claim 4, specifically the component of a “simulated fleet configuration unit is configured to execute on an application server”

As discussed above in regards to claim 1, the cited references fail to disclose a “simulated fleet” as claimed. Consequently, the cited references cannot reasonably be said to disclose a “simulated fleet configuration unit.”

Prabhakaran similarly fails to disclose an “application server,” a phrase that is entirely absent from the Prabhakaran disclosure. The portion of Prabhakaran cited by the Examiner, beginning at Line 23 of Column 33, discloses a variety of programming languages, potential integration with CAD software, and other software characteristics that do not implicitly, inherently or suggestively relate to application servers, or any other information technology configuration or architecture related to the hosting of an application.

Similarly, the Becker disclosure is not detailed enough with respect to information technology architecture to disclose an “application server” being used to execute a “simulated fleet configuration unit.” Becker broadly teaches software and hardware configurations of building a model, but does not disclose an application server. Becker does not recite an “application server. Moreover, as discussed above, Becker and the other cited references do not even disclose a “simulated fleet,” let alone a “simulated fleet configuration unit.”

The Examiner’s citation to Fig. 5 and Fig. 6 of Murakami does not disclose an “application server.” These figures are simply flow charts representing “steps for computing any surplus or shortage of vehicles being distributed” and “how vehicles are redistributed on the basis of the computation of a surplus or a shortage of vehicles” (col. 9, lines 32-36; col. 10, lines 17-20). Flow charts of computational and distributional steps do not disclose an “application server” or any other type of information technology configuration or architecture. The word “server” is not even found in Marukami, so Marukami does not teach an “application server.” The other aspects of Marukami cited by the Examiner in no way teach an “application server.” Instead, the citations reemphasize the pre-existing nature of the assets in Marukami, discussing the movement of vehicles between terminals 2 of a Port P. “Predicted starting trips represent daily demands based on past demand results.” (Column 5, Lines 41-43). Such citations have little to do with the Appellants’ claims, and fail to relate in any way to an “application server” or any other type of information technology

configuration or architecture. The “rental” aspect the Examiner relies on out of context is merely with respect to permitting use by a contractor of a pre-existing vehicle (Column 5, lines 3-29), and has nothing to do with how the logic of the system is housed in various information technology components. Moreover, the entire discussion is with respect to allowing selective rental and use of a pre-existing vehicle. Thus, there is no simulated fleet configuration unit, let alone an application server for the configuration unit. Clark and Swedish simply do not disclose an “application server” or a “simulated fleet configuration unit.” Therefore, there are elements of claim 4 that are not disclosed by the cited references.

Contrary to the assertions of the Examiner, the fact that programming logic is performed by an unnamed and undescribed information technology configuration does not mean that the use of an applications server is disclosed. Such an extrapolation is an overly “general” assertion that is prohibited by *In re Vaeck* 947 F.2d 488, 493, 20 USPQ2d 1438, 1444 (Fed. Cir. 1991) and *In re Thrift*, Case Number 01-1445 (Fed. Cir. August 9, 2002).

5. The cited references do not disclose all of the elements of claim 14, including the functionality of a “reporting and analyzing module” that “is configured to execute on an application server”

As discussed above, the cited references do not disclose an “application server,” much less a “reporting and analyzing module” executed on an “application server.” Contrary to the assertions of the Examiner, Column 40, Lines 3-13 of Prabhakaran teaches away from the limitations of claim 14 by indicating that Prabhakaran is limited to any particular technical configuration, infrastructure, or programming language. The cited portion of Prabhakaran does not disclose any specific modular structure, functionality relating to the generating of reports or analysis, or an application server used to execute any type of module. Moreover, Prabhakaran does not explicitly recite an “application server.” As discussed above, Becker, Murakami, Clark, and Swedish do not disclose an “application server” and those references fail to even attempt to disclose any characteristic of information technology infrastructure that should be used to support the functionality disclosed in the references. Material elements of claim 14 are not disclosed within the references cited by the Examiner.

6. The cited references do not disclose all of the limitations of claim 15, which includes the functionality of a “communications interface” that includes a “Hyper-Text Transfer Protocol (HTTP) compliant web server.”

Contrary to the assertions of the Examiner, column 4 of Prabhakaran fails to disclose the use of a “web server” much less an “HTTP compliant web server.” As provided above, none of the other cited references disclose a “server” or any other type of technology architecture, much less an “HTTP compliant web server.” Therefore, claim 15 includes elements not disclosed in the prior art.

7. The cited references do not disclose all of the elements of claim 22, which includes both “pre-existing fleet assets” and “simulated assets” with each of the “pre-existent and simulated asset having a parameter associated therewith”

The Examiner did not specifically address claim 22 in the Final Office Action. However, as discussed above, none of the cited references discloses a system that simulate both pre-existing fleet assets as well as hypothetical assets. As discussed above and below, the cited references focus on different problems than the Appellants’ claims. The question of “[h]ow does a change (i.e., an addition, or a subtraction) in the configuration of *my fleet* effect its overall performance?” is not addressed by any of the cited references. None of the cited references involves both existing and non-existing assets, and thus, none of the cited references discloses the ability to process both types of assets in an integrated manner. Thus, claim 22 includes elements not disclosed in the prior art.

8. There was no objective reason to modify or combine the teachings of the cited references because the cited references teach away from each other and away from Claim Group A

It is impermissible for the Examiner to reconstruct the claimed invention from selected pieces of prior art absent some suggestion, teaching, or motivation in the prior art to do so. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051-52, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988). Thus, references cannot be combined based on hindsight. The fact that the Examiner attempts to combine five references together in order to reject the claims is substantial evidence in and of itself that the claims of Claim Group A would not have been obvious to one of ordinary skill in the art at the time of invention. Moreover, the combination of five references is evidence that the Examiner used the Appellants’ claims as a roadmap to select bits and pieces from various references even when the references were directed to solving an unrelated problem. For example,

the Examiner cites to a part of Clark as a disclosure of costs associated with resources (Final Office Action, Page 19). However, Clark's system is directed to optimization software that eliminates the need to manually hard-code functions for the transformation of data into proper format for a problem solver (Col. 2, Lines 37-48). Clark's system does not teach any sort of simulated fleet as claimed by the Appellants. Moreover, the cited references teach away from each other and away from the Appellants' claims.

Despite numerous requests in previous office action responses, the Examiner has failed to identify the suggestions or motivations in the prior art necessary to reject Appellants' claims on the basis of 103(a) and the highly divergent cited references. Put simply, the cited references involve highly divergent systems created to perform highly divergent functions and solve a variety of unrelated problems. Not one of the cited references seeks to answer the question answered by the Appellants' patent application: "[h]ow does a change (i.e., an addition, or a subtraction) in the configuration of *my fleet* effect its overall performance?" Yet, the Examiner has combined a large number of cited references to teach the solution to a question that none of the cited references seeks to answer or even ask.

a. The teachings of the cited references are limited to existing resources that teach away from a simulated fleet for procurement purposes

The cited references teach away from the simulated fleet claimed by the Appellants because the cited references are limited to existing resources. The Final Office Action admits that Prabhakaran does not disclose simulation of a fleet of assets (Final Office Action, page 19). Instead, Prabhakaran focuses on information gathering related only to the motion, location, and dispatch of existing fleets (Col. 1, Lines 22-23). While Prabhakaran exhibits no cognizance of the procurement or disposal of assets, the Appellants' claims allow fleet managers "to effectively and efficiently determine the timing, selection, and acquisition of replacement equipment, and the disposal of equipment being retired from the fleet or coming to an end of the lease term (Specification, Page 2, Lines 14-18)." Although both Prabhakaran and the Appellants' claims relate "generally" to assets, the Appellants' inventory management of a fleet of assets over time from a business perspective is materially different than a dispatcher routing vehicles on a particular day during a particular period of time.

Murakami is also limited to existing fleets, not simulated, "hypothetical" or "fantasy" fleets.

Murakami teaches the "reallocation" or "redistribution" of existing assets, which by their very nature in the context of the patent cannot be simulated, since such a simulation would undermine the very teachings of the patent. Murakami deals with the constraints of actual operation and its teachings are based on a maximization of existing resources.

Becker also teaches away from the claimed "simulated fleet." Becker focuses on the problem of "traffic planning" (Becker, Page 1), and more specifically, Becker focuses on the extremely specific challenges of modeling a fleet management system of "an airport shuttle service" (Becker, Page 1). Thus, Becker teaches a modeling process for developing a tool to manage a fleet of available resources (Page 4, Paragraph 3). Becker's disclosure is directed toward engineering efforts for developing a management system rather than toward any business management efforts based on a simulated fleet (Pages 2-4). In contrast to Becker, the Appellants' claims manage simulated assets over time to create a potentially available "simulated" or "hypothetical" fleet that minimizes costs and maximizes benefits. Becker discloses no cognizance of costs, the lifespan of assets, maintenance activities, the procurement process, the sell-off of assets, or any other aspect of asset outside of the "traffic planning" aspects. Becker is a different solution to a different problem, and thus is not an appropriate reference from a section 103 perspective.

Clark is also irrelevant to the goals and purposes of the Appellants' claims, and thus, Clark teaches away from the claimed invention. As discussed above, its key use by the Examiner is with respect to costs associated with resources. Its relevance and applicability to the other references is never established by the Examiner. Moreover, the reference itself is directed to development of optimization software suites that do not require manual hard-code functions for the transformation of data. Clark does not disclose a simulated fleet as claimed by the Appellants.

Swedish also teaches away from a simulated fleet because it is limited to the scheduling of existing resources. Swedish is directed to optimizing the dispatch of tugboats and barges in a waterway transportation system based upon predicted transportation demands (Abstract). Although Swedish teaches a simulation, it is limited to simulation of the logistics of a transportation dispatch system. It is not cognizant of managing a simulated fleet from a total management system that can predict costs associated with adding an asset to a simulated fleet, or to other characteristics not related to scheduling.

In summary, the five references cited by the Examiner against Claim Group A teach away from the Appellants' claims. The Examiner's attempts to combine the five references fail to focus

on the claim elements, let alone explain how the references can be combined to recite the elements in a cogent manner. The issue of "suboptimal configurations" or the desire to "minimize wasted assets" focused on by the Examiner merely serve to show the limitations of the prior art. In contrast to the prior art, which focuses on existing fleets and the reallocations of existing resources, claim 1 includes clearly patentable subject matter and defines over the prior art of record for all of the reasons discussed above. Thus, it would not have been obvious to one of ordinary skill in the art to combine the references against the Appellants' claims.

b. The cited references teach away from each other because they are directed to different objectives

Becker teaches away from the other cited references because, as mentioned above, because Becker is directed toward an engineering process for developing a fleet management system. Although the resultant system may allow for simulation of existing airport shuttles, the reference itself teaches the process to be used to create a management system. It focuses on ways to build and implement software programs and hardware structures to best model a traffic system. Prabhakaran, Murakami, and Swedish teach already implemented systems for optimizing the dispatching of resources. Thus, Becker teaches away from combination with the other cited references.

Clark also teaches away from combination with the other references. As discussed above, the Examiner cites to Clark as a disclosure of costs associated with resources (Final Office Action, Page 19). However, Clark's system is directed to optimization software that eliminates the need to manually hard-code functions for the transformation of data into proper format for a problem solver (Col. 2, Lines 37-48). Clark's system does not teach the optimization of dispatching available resources. Thus, Clark teaches away from the other cited references. Combination of the cited references would not have been obvious to one of ordinary skill in the art, and therefore, all of the claims in Claim Group A are in condition for allowance.

B. CLAIM GROUP B WAS INCORRECTLY REJECTED BECAUSE THE FINAL OFFICE ACTION FAILS TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS

In the Final Office Action, claims 5-9, 13, and 16-20 (Claim Group B) were rejected as unpatentable under 35 U.S.C. §103(a) over (i) Prabhakaran in view of (ii) Becker, (iii) Linde, (iv) Murakami, (v) Clark, and (vi) Swedish. Appellants respectfully submit that the claims of Claim

Group B would not have been obvious to one of ordinary skill in the art because the cited references do not teach all of the claim limitations of Claim Group B. Moreover, combination of the cited references would not have been obvious to one of ordinary skill in the art at the time of invention because the cited references teach away from each other and the claims in Claim Group B. The Examiner cannot point to any portions of the various cited references to identify a motivation or suggestion in the art to combine the various references in accordance with the Appellants' claims. Impermissible hindsight, or highly generalized conclusions about the desirability of the Appellants' claims cannot serve as the basis for a 103 rejection. Thus, the Examiner has failed to establish a *prima facie* case of obviousness against Claim Group B.

As an initial matter, Linde should be included in the prior art analysis because the Linde publication date is May 18, 2002, a date that is more than two years later than the filing date of Appellants' patent application. Furthermore, even if Linde is included as prior art, Claim Group B includes the following elements that are not disclosed in the prior art cited by the Examiner: (i) "simulated fleet configuration unit;" (ii) the ability of a user to "add one or more assets from said second database to said simulated fleet;" (iii) "a third database that includes data associated with a plurality of pre-configured assets;" (iv) the ability of "the user to add one or more assets based on type from said third database to said simulated fleet;" (v) a "simulated fleet" that "includes a first asset from said existing fleet, and a second asset selected from one said second database;" (vi) a "second database corresponding to assets for purchase, rental, and lease;" (vii) a "third database corresponding to preconfigured assets and user-defined assets;" (viii) a "second report having another composite output" that is used by "the user to compare said first and second reports to evaluate the existing fleet and the simulated fleet;" (ix) a "fleet database" and a "market database" that allows a user to add a "piece of industrial equipment to said simulated fleet;" and (x) "a pre-configured asset database." Only one shortcoming in the prior art with respect to the Appellants' claims is necessary to preclude the rejection of Applicants' claims.

1. Linde cannot be established to predate the priority date for the Appellants' claims, and thus Linde cannot be used to reject Appellants' claims

The date identified in the Linde publication is May 18, 2002. Despite several requests by the Appellants in various Office Action responses preceding the Final Office Action, the Examiner has failed to provide proof or even some type of explanation as to how a publication dated May 18,

2002 can be used as prior art with respect to an application filed on February 14, 2000 that claims priority from an application filed on November 16, 1999. Without Linde, the remainder of the cited references, even when asserted in an overly broad and impermissible manner against the Appellants' claims by the Examiner, cannot be said preclude the allowance of the Appellants' claims.

However, even if Linde is somehow an appropriate reference to be used to reject Appellants' claims, the rejections of Appellants' claims are still inappropriate.

2. The cited references do not disclose all of the elements of claim 5 , such as the functionality of a "simulated fleet configuration unit" that "is further configured to allow the user to add one or more assets from said second database to said simulated fleet"

As admitted in the Final Office Action, Becker, Prabhakaran, Murakami, Clark, and Swedish are all not detailed enough with respect to databases to disclose a multiple database configuration where one database stores assets that can be procured while a different database stores the simulated fleet. The Examiner admits that Prabhakaran fails to teach the elements of claim 5 (Final Office Action, page 2). Contrary to the Examiner's assertion, Linde also fails to disclose a dual database configuration on page 7 of Linde. The word "database" and its equivalents, fails to appear on page 7 of Linde. Thus, none of the references cited by the Examiner can be said to disclose the "first database" and "second database" configuration of the Appellants' claims. Any assertions to the contrary are prohibited as the overly general assertions of the type precluded by the Federal Circuit Court of Appeals in *In re Thrift* and other case law cited above.

As discussed above in relation to Claim Group A, Prabhakaran, Becker, and Murakami, Clark, and Swedish all fail to disclose any process by which currently non-available assets are added to a simulated fleet. On the contrary, they all deal with utilization of existing fleet assets. Linde also fails to disclose a "simulated fleet" or the capability of adding assets to the "simulated fleet." Like the other references, Linde also deals only with existing fleet assets by simulating the movement of existing assets (Page 1). Thus, claim 5 and its dependent claims include elements not disclosed in the cited art.

3. The cited references do not disclose all of the elements of claim 6, “including a third database that includes data associated with a plurality of pre-configured assets” that allows “the user to add one or more assets based on type from said third database to said simulated fleet”

None of the references cited by the Examiner discloses the elements of claim 6. The lack of a three-database information technology architecture for compartmentalizing existing fleet, simulated fleet, and potential procurement data is particularly noticeable in a review of the cited references. Moreover, none of the cited references distinguish between assets and pre-configured assets. Furthermore, none of the cited references disclose a “composite value” much less a “composite value derived from corresponding parameter values associated with a plurality of specific assets of a specific type” as provided for in claim 6. None of the cited references provides any sort of detail regarding information technology architecture or configuration, and thus none of the cited references can be said to disclose a two distinct database system, much less a system with three distinct databases.

Contrary to the assertions of the Examiner, page 7 of Linde merely discloses the ability to view asset information that is organized into one or more categories. The ability to add one or more assets based on the type of asset(s) is not disclosed in Linde. Moreover, the Examiner’s general assertion that Becker discloses the elements of claim 6 is unfounded because pages 9-11 of Becker do not disclose a database, let alone an architecture made up of three distinct databases. Instead, Becker teaches the use of Petri Net Models without disclosing the use of any database or configuration of databases. Thus, neither page 7 of Linde nor pages 9-11 of Becker disclose the limitations of claim 6. The cited references also fail to disclose allowing “the user to add one or more assets based on type from said third database to said simulated fleet” as provided for in claim 6. Thus, claim 6 and its dependent claims include elements not disclosed in the cited art.

Claim 6 is also in condition for allowance as a dependent from claim 5. Although in regard to claim 5, the Examiner admits that Prabhakaran does not disclose the elements of claim 5 (Final Office Action, Page 2), the Examiner inconsistently asserts, in regard to claim 6, that Prabhakaran teaches the system according to claim 5” (Final Office Action, page 4). The Appellants contend that the Examiner’s assertion with respect to Prabhakaran should be applied to the analysis regarding claim 6.

4. The cited references do not disclose all of the elements of claim 7, such as a “simulated fleet” that “includes a first asset from said existing fleet, and a second asset selected from one said second database corresponding to assets for purchase, rental, and lease, said third database corresponding to pre-configured assets, and user-defined assets”

As discussed above, a three-database configuration as claimed, as well as pre-configured assets and simulated fleets are each absent from all of the cited disclosures. Thus, claim 7 includes elements not disclosed in the prior art.

Claim 7 is also in condition for allowance as a dependent of claim 6. Again, the Examiner admits that Prabhakaran does not teach the elements of a claim (Final Office Action, page 4) and then inconsistently asserts that Prabhakaran does teach the system according to that claim (Final Office Action, page 5). For the reasons discussed, the Examiner is correct in admitting that Prabhakaran does not teach the elements of claim 6.

5. The cited references do not disclose all of the elements of claim 13, “wherein said report associated with said simulated fleet is a first report” and “a second report having another composite output that is associated with the existing fleet, to thereby allow the user to compare said first and second reports to evaluate the existing fleet and the simulated fleet”

As discussed above, none of the cited references discloses a “composite output” and thus, none of the cited references can be said to disclose reports involving a “composite output” or the comparing of reports that utilize a “composite output.” Contrary to the assertion by the Examiner, Becker (Pages 4-7, and 9-11) fails to disclose reports relating to existing fleets, and thus cannot be said to disclose the functionality of comparing a first report of a simulated fleet with a second report for an existing fleet. The arguments above are equally applicable here as to the remaining references. As discussed above, the cited references do not disclose a “simulated fleet.” Thus, claim 13 includes elements not disclosed by the references cited by the Examiner.

6. The cited references do not disclose all of the elements of claim 16, including “a fleet database,” “a market database,” allowing a user to add a “piece of industrial equipment to said simulated fleet,” or a report having a “composite output”

All of the arguments made in respect to claim 1 apply equally to claim 16. For example, the cited references do not teach a “simulated fleet” or the functionality of adding an asset to “a simulated fleet” because they are limiting to existing fleets. Linde is also limited to sales of

existing fleet units. Indeed, the Examiner admits that Linde does not teach simulation (Final Office Action, Page 11). As discussed above, the elements of “composite output” that corresponds to a parameter that is a characteristic of “all” pieces of industrial equipment is not disclosed in the cited art. All of the analysis relating to claim 1 also supports claim 16. Thus, claim 16 also includes additional elements not disclosed in the cited references.

Furthermore, claim 16 includes additional patentable elements. The cited references do not disclose “a report having a composite output corresponding to said parameter that is characteristic of all pieces of industrial equipment in said simulated fleet” as provided in claim 16. The Examiner misconstrues page 11 of Becker as disclosing these elements, but page 11 of Becker does not even mention “a report having a composite output.” In contrast, page 11 of Becker teaches only the sending of confirmations and order to and from vehicles in relation to a system for alleviating traffic congestion. The cited references also fail to explicitly recite a “fleet database and a market database.” As discussed above, the cited references fail to teach the dual-database architecture as claimed by the Appellants. The cited references also fail to disclose the specific ability to “add a second piece of industrial equipment based on data” available on a “market database.” Contrary to the assertions of the Examiner, pages 1-7 of Linde fail to teach that “each” asset has the associated parameter. In view of all of the foregoing reasons, independent claim 16 and its dependent claims include subject matter not disclosed in the cited references.

**7. The cited references do not disclose all of the elements of claim 17, such as
“a pre-configured asset database that includes data associated with a
plurality of modeled pieces of industrial equipment based on type”**

As discussed above, the cited art fails to distinguish between pre-configured assets and assets generally. Similarly, a “pre-configured asset database” is not expressly or implicitly disclosed in the cited references. Contrary to the Examiner’s assertion, page 11 of Becker does not disclose “a pre-configured asset database that includes data associated with a plurality of modeled pieces” (claim 17). To the contrary, Becker teaches the use of Petri Net model to represent data. Thus, claim 17 includes subject matter not disclosed in the cited references.

- 8. The cited references do not disclose all of the elements of claim 18, which includes “a second report having another composite output based on industrial equipment in said existing fleet to thereby allow the user to compare said first and second reports to evaluate said existing and simulated fleets”**

Claim 18 is in condition for allowance for at least the same reasons discussed above in relation to claim 13. None of the cited references disclose the processing of both existing and simulated fleets, and thus none of those systems can generate reports on each fleet, much less compare such reports. Claim 18 includes subject matter not disclosed in the cited references.

- 9. The cited references do not disclose all of the elements of claim 19**

The arguments presented above in relation to claims 1 and 16 are also applicable to claim 19. Thus, claim 19 is in condition for allowance for at least the same reasons. The cited references fail to disclose the three-database architecture, let alone “a fleet database,” “a market database,” and a “pre-configured asset database.” The cited references also fail to teach a “simulated fleet” and the functionality of “selecting a first piece of industrial equipment for inclusion in said simulated fleet from the existing fleet based on data in the fleet database” (claim 19). “A report having a composite output” is also absent from the cited references.

- 10. The cited references do not disclose all of the elements of claim 20**

Claim 20 is in condition for allowance for at least the same reasons as discussed above in relation to claims 1, 13, and 18.

- 11. There was no objective reason to modify or combine the teachings of the cited references because the cited references teach away from each other and away from Claim Group B**

All of the arguments presented in relation to the improper combination of references against Claim Group A apply equally to Claim Group B. Now the Examiner attempts to combine six references. In addition, Linde teaches away from the Appellants’ claims and away from the other cited references. In contrast to the other references, Linde focuses merely on specific products and types of products. Namely, Linde discloses specific types of industrial equipment that it sells. Most of the Linde reference is dedicated to information regarding the history of its forklifts and the models of forklifts that it sells. Linde does not teach use of a simulated fleet for maximizing the total management of assets being simulated. Unlike the Appellants’ claims, Linde focuses on

information that does not relate to the assets themselves, and instead, focuses exclusively on the tasks and functions to be performed using the assets. Simply put, Linde is substantially different solution to a substantially different problem. There is no suggestion or motivation in the art to utilize Linde in order to achieve the benefits included in the Appellants' claims. There is no evidence that Linde has any cognizance of the lifespan of assets, the procurement process, the sell-off of assets, or any other perspective that exists over a period of time.

There is no suggestion or motivation in the art to combine Linde with Swedish, Becker, Prabhakaran, or Murakami. In contrast to Swedish, Becker, Murakami, and Prabhakaran, Linde is not concerned with dispatching traffic flow. The Examiner's asserted motivation for combination – to teach fleet assets available for purchase (Final Office Action, page 3) – is misinterpreted because Becker, Prabhakaran, Murakami, and Swedish teach away from selling their existing resources. Their disclosures focus on dispatching a fleet and are not cognizant of making their fleets available for purchase. Sales and procurement are not processes to which those disclosures are cognizant of, and thus those disclosures cannot be said to disclose a motivation or suggestion relating to procurement and/or sale activities. Therefore, it would not have obvious to one of ordinary skill in the art to combine the references against Claim Group B. Claim Group B is in condition for allowance. Some of the claims in Claim Group B (such as claims 5-9 and 13) depend on claim in Claim Group A, and thus are also in condition for allowance for the reasons provided in the discussion of Claim Group A discussed above.

C. CLAIM GROUP C WAS INCORRECTLY REJECTED BECAUSE THE FINAL OFFICE ACTION FAILS TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS

In the Final Office Action, claims 10-12 and 21 (Claim Group C) were rejected as unpatentable under 35 U.S.C. §103(a) over (i) Prabhakaran in view of (ii) Becker, (iii) Linde, (iv) GE-Fleet, (v) Murakami, (vi) Clark, and (vii) Swedish. Appellants respectfully submit that the claims of Claim Group C would not have been obvious to one of ordinary skill in the art because the cited references do not teach all of the claim limitations of Claim Group C. Moreover, combination of the cited references would not have been obvious to one of ordinary skill in the art at the time of invention because the cited references teach away from each other and Claim Group C. Thus, the Examiner has failed to establish a *prima facie* case of obviousness against Claim

Group C. As argued above, Linde is not an appropriate reference for use by the Examiner to reject Appellants' claims because the Appellants' filing and priority dates predate the date on which Linde was published.

Some of the claims in Claim Group C (claims 10-12) are dependent upon claims in Claim Group A. Claim 21 depends on claim 20, which is part of Claim Group B. Thus, each of the claims in Claim Group C is in condition for allowance based on the analysis provided above. However, the claims in Claim Group C also include additional elements that distinguish those claims from the prior art cited by the Examiner.

1. The cited references do not disclose all of the elements of claims 10-12 and 21

On page 26 of the Final Office Action, the Examiner cites page 3 of GE to reject claim 10. However, page 3 fails to disclose total maintenance cost, hourly maintenance cost, total least cost, and total operation cost as listed in claim 10. Moreover, page 3 of GE makes no reference to the words "utilization" and "rating" much less a "utilization rating." Thus, claim 10 includes elements not disclosed in the prior art.

As discussed above, the Examiner's citation to page 3 of GE fails to address the Appellants' claim elements of "total maintenance cost," "total lease cost," "total operating cost," and "composite output." The cited references also fail to recite a "composite output" that is determined "according to an arithmetic sum function" as provided by claim 11. The Final Office Action also fails to even mention the "arithmetic sum function" much less provide a prior art reference, even though it is an element in Appellants' claim. Thus, claim 11 includes elements not disclosed in the prior art.

As discussed above, the Examiner's citation to page 3 of GE fails to address the Appellants' claim elements of "hourly maintenance cost," "total hourly cost," "utilization," and "composite output." The cited references also fail to recite the claim 12 elements of a "composite output" that is determined "according to an arithmetic average function." Furthermore, the Final office action fails to even mention the "arithmetic average function." Thus, claim 12 includes elements not disclosed in the prior art.

Claim 21 includes the limitation "wherein the parameter comprises a financial figure." As discussed above, the references cited by the Examiner fail to disclose a parameter associated with

each asset, much less a financial figure that is associated with each asset. Thus, claim 21 includes elements not disclosed in the prior art.

2. There is no suggestion or motivation in the art to combine the cited references as asserted by the Examiner

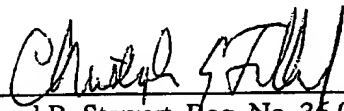
The claims in Claims Group C were rejected by the Examiner on the basis of seven combined references. For the same reasons discussed above in relation to Claim Groups A and B, it would not have obvious to one of ordinary skill in the art to combine the cited references at the time of invention. In addition, it would not have been obvious to combine GE with the Appellants' claims or the other cited references. GE appears to be a sales mechanism or advertisement for products and services, including diverse offerings such as satellite technology and accident management. The GE disclosure is limited to such a high-level and undetailed listing of benefits and goals that a motivation to combine GE cannot be said to be found in the GE disclosure, or any of the other cited references. Although GE teaches a fleet management option, it does not disclose a simulated fleet. Moreover, GE teaches away from the dispatching purposes of the other cited references. Therefore, all of the claims in Claim Group C are in condition for allowance.

IX. CONCLUSION

Appellants respectfully submit that all of the appealed claims in this application are patentable for at least the reasons stated above and request that the Board of Patent Appeals and Interferences overrule the Examiner and direct allowance of the rejected claims. Despite the citation of numerous references, the Examiner has not provided sufficient evidence to support a rejection of the Appellants' claims on the basis of obviousness. There are numerous claim elements not disclosed in any of the seven references cited by the Examiner. Moreover, the Examiner provides no support for the combination of references asserted in the Final Office Action. There is simply no suggestion or motivation in the art to combine the references as proposed by the Examiner. Moreover, the references affirmatively teach away from each other, and Appellants' claims. In summary, the Appellants' claims were rejected in a overly generalized fashion as was specifically prohibited by the Federal Circuit Court of Appeals in *In re Vaeck*, *In re Thrift*, and other decisions.

This brief is submitted in triplicate. It is believed that any fees due with respect to this paper have been identified in any transmittal accompanying this paper. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge account number 18-0013 in the name of Rader, Fishman and Grauer PLLC.

Respectfully submitted,

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Customer No.: 010291
Date: September 9, 2003

APPENDIX OF CLAIMS ON APPEAL – CLAIMS 1-22

1. An electronic system for modeling a simulated fleet comprising:
a simulated fleet configuration unit configured to allow a user to add one or more assets to said simulated fleet, each asset having a parameter associated therewith;
a reporting and analysis module configured to generate a report having a composite output that corresponds to said parameter and is characteristic of all of said assets in said simulated fleet; and
a communications interface configured to facilitate electronic remote access of said system by the user.
2. The system of claim 1 wherein said simulated fleet configuration unit comprises one of:
a fleet builder module, including a step-by-step asset entry system;
a fleet search module including a first add-to-fleet feature;
a simulated fleet module including an add-asset feature, and
a market search module including a second add-to-fleet feature.
3. The system of claim 1 wherein said simulated fleet configuration unit is further configured to store data associated with said assets of said simulated fleet in a first database, said first database further including data associated with assets in an existing fleet, said simulated fleet configuration unit being further configured to allow the user to add assets from said existing fleet to said simulated fleet.
4. The system of claim 3 wherein said simulated fleet configuration unit is configured to execute on an application server.
5. The system of claim 3 further including a second database that includes data associated with assets available for one of a purchase, rental and lease transaction, wherein said simulated fleet configuration unit is further configured to allow the user to add one or more assets from said second database to said simulated fleet.

6. The system of claim 5 further including a third database that includes data associated with a plurality of pre-configured assets, each preconfigured asset comprising a parameter having a composite value derived from corresponding parameter values associated with a plurality of specific assets of a similar type, said simulated fleet configuration unit being further configured to allow the user to add one or more assets based on type from said third database to said simulated fleet.

7. The system of claim 6 wherein said simulated fleet includes a first asset from said existing fleet, and a second asset selected from one of said second database corresponding to assets for purchase, rental and lease, said third database corresponding to pre-configured assets, and user-defined assets.

8. The system of claim 3 wherein said assets comprise industrial equipment.

9. The system of claim 8 wherein said assets comprise forklifts.

10. The system of claim 9 wherein said parameter includes at least one of a total maintenance cost, an hourly maintenance cost, a total lease cost, a total operating cost, a total hourly operating cost, and a utilization rating.

11. The system of claim 10 wherein said parameter is one of said total maintenance cost, said total lease cost, and said total operating cost, and wherein said reporting and analyzing module is further configured to determine said composite output according to an arithmetic sum function.

12. The system of claim 10 wherein said parameter is one of said hourly maintenance cost, said total hourly cost, and said utilization, wherein said reporting and analyzing module is further configured to determine said composite output according to an arithmetic average function.

13. The system of claim 7 wherein said report associated with said simulated fleet is a first report, said reporting and analyzing module being further configured to generate a second report having another composite output that is associated with said existing fleet, to thereby allow the user to compare said first and second reports to evaluate the existing fleet and the simulated fleet.

14. The system of claim 3 wherein said reporting and analyzing module is configured to execute on an application server.

15. The system of claim 3 wherein said communications interface comprises a Hyper-Text Transfer Protocol (HTTP) compliant web server.

16. An electronic system for modeling a simulated fleet comprising:
a fleet database including data associated with an existing fleet comprising a plurality of specific pieces of industrial equipment;
a market database including data associated with a plurality of specific pieces of industrial equipment that are available for one of purchase, rental and lease;
a simulated fleet configuration unit configured to allow a user to add a first piece of industrial equipment to said simulated fleet from said existing fleet based on data in said fleet database, said simulated fleet configuration unit being further configured to allow said user to add a second piece of industrial equipment based on data from one of said market database, and user-defined industrial equipment, each piece of industrial equipment having a parameter associated therewith;
a reporting and analysis module configured to generate a report having a composite output corresponding to said parameter that is characteristic of all pieces of industrial equipment in said simulated fleet; and
a communications interface configured to facilitate electronic remote access by said user.

17. The system of claim 16 further including a pre-configured asset database that includes data associated with a plurality of modeled pieces of industrial equipment based on type.

18. The system of claim 17 wherein said report is a first report, said reporting and analysis module being further configured to generate a second report having another composite output based on industrial equipment in said existing fleet to thereby allow the user to compare said first and second reports to evaluate said existing and simulated fleets.

19. A method of modeling a simulated fleet comprising the steps of:

(A) providing a fleet database including data associated with an existing fleet comprising a plurality of specific pieces of industrial equipment;

(B) providing a market database including data associated with a plurality of specific pieces of industrial equipment that are available for one of purchase, rental and lease;

(C) providing a pre-configured asset database that includes data associated with a plurality of modeled pieces of industrial equipment based on type;

(D) selecting a first piece of industrial equipment for inclusion in said simulated fleet from the existing fleet based on data in the fleet database, and further selecting a second piece of equipment based on data from one of the market database, the pre-configured asset database and user-defined pieces of industrial equipment, each piece of industrial equipment having a parameter of interest associated therewith;

(E) generating a report having a composite output value as a function of respective parameter values associated with the first and second pieces of equipment; and

(F) electronically transmitting the report to the user at a remote location.

20. The method of claim 19 wherein the report is a first report, said method further including the step of:
generating a second report having another composite output value based on respective parameter values associated with pieces of industrial equipment in the existing fleet to thereby allow the user to compare the first and second reports to evaluate the existing and simulated fleets.

21. The method of claim 20 wherein the parameter comprises a financial figure.

22. An electronic system for modeling a simulated fleet comprising a combination of pre-existing fleet assets and simulated assets comprising:

a simulated fleet configuration unit configured to allow a user to add one or more simulated assets to said simulated fleet, each of pre-existent and simulated asset having a parameter associated therewith;

a reporting and analysis module configured to generate a report having a composite output that corresponds to said parameter and is characteristic of all of said assets in said simulated fleet; and

a communications interface configured to facilitate electronic remote access of said system by the user.

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<h2 style="margin: 0;">FEE TRANSMITTAL</h2> <h3 style="margin: 0;">for FY 2003</h3> <p style="font-size: small; margin: 0;">Effective 01/01/2003, Patent fees are subject to annual revision.</p>				Complete if Known																																																																																																																																																																																																																																																																																																																															
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1503	630	2503	315	Plant issue fee																																																																																																																																																																																																																																																																																																																															
1460	130	1460	130	Petitions to the Commissioner																																																																																																																																																																																																																																																																																																																															
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)																																																																																																																																																																																																																																																																																																																															
1806	180	1806	180	Submission of Information Disclosure Stmt																																																																																																																																																																																																																																																																																																																															
8021	40	8021	40	Recording each patent assignment per property (times number of properties)																																																																																																																																																																																																																																																																																																																															
1809	750	2809	375	Filing a submission after final rejection (37 CFR 1.129(a))																																																																																																																																																																																																																																																																																																																															
1810	750	2810	375	For each additional invention to be examined (37CFR 1.129(b))																																																																																																																																																																																																																																																																																																																															
1801	750	2801	375	Request for Continued Examination (RCE)																																																																																																																																																																																																																																																																																																																															
1802	900	1802	900	Request for expedited examination of a design application																																																																																																																																																																																																																																																																																																																															
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1. BASIC FILING FEE <table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th colspan="2">Large Entity</th> <th colspan="2">Small Entity</th> <th rowspan="2">Fee Description</th> <th rowspan="2">Fee Paid</th> </tr> <tr> <th>Fee Code</th> <th>Fee (\$)</th> <th>Fee Code</th> <th>Fee (\$)</th> </tr> </thead> <tbody> <tr><td>1001</td><td>750</td><td>2001</td><td>375</td><td>Utility filing fee</td><td></td></tr> <tr><td>1002</td><td>330</td><td>2002</td><td>165</td><td>Design filing fee</td><td></td></tr> <tr><td>1003</td><td>520</td><td>2003</td><td>260</td><td>Plant filing fee</td><td></td></tr> <tr><td>1004</td><td>750</td><td>2004</td><td>375</td><td>Reissue filing fee</td><td></td></tr> <tr><td>1005</td><td>160</td><td>2005</td><td>80</td><td>Provisional filing fee</td><td></td></tr> <tr><td colspan="6" style="text-align: right;">SUBTOTAL (1) (\$) 0.00</td></tr> </tbody> </table>						Large Entity		Small Entity		Fee Description	Fee Paid	Fee Code	Fee (\$)	Fee Code	Fee (\$)	1001	750	2001	375	Utility filing fee		1002	330	2002	165	Design filing fee		1003	520	2003	260	Plant filing fee		1004	750	2004	375	Reissue filing fee		1005	160	2005	80	Provisional filing fee		SUBTOTAL (1) (\$) 0.00																																																																																																																																																																																																																																																																																					
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Name (Print/Type) Christopher J. Falkowski				Complete (if applicable)																																																																																																																																																																																																																																																																																																																															
Registration No. (Attorney/Agent) 45,989				Telephone (248) 594-0655																																																																																																																																																																																																																																																																																																																															
Signature				Date July 9, 2003																																																																																																																																																																																																																																																																																																																															

Fee Transmittal

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: July 9, 2003

Signature: (Leslie M. Wang)